

Sri Chand Gupta

Vs

Gulzar Singh and Another

Civil Appeal No. 849 of 1987

(K. Ramaswamy, Yogeshwar Dayal JJ)

22.10.1991

ORDER

1. The Appellant landlord had filed an application under Section 14(1)(b) of Delhi Rent Control Act, 1958 (for short the 'Act') for ejection of the respondents. All the three courts concurrently found that Gulzar Singh was sole tenant. The Rent controlled and Tribunal found that he subject the demised premises to Avtar Singh, his brother and therefore ordered ejection. The High Court found that the tenant was in exclusive possession of the premises bearing No. W.Z. 258/4, Subash Bazar, Nangal Raya, New Jail Road, New Delhi, and that he did not sublet the premises the petitioner for ejection was dismissed. Thus this appeal by special Leave under Article 136 of the Constitution.

2. Shri. Nagaraja, Learned counsel for the appellant has contended that the High Court has committed a gross error in interfering with the concurrent finding of fact records by additional Rent Controller and Rent Control Tribunal That The tenant, Gulzar Sigh has Sublet the premises in question to his brother, Avtar Singh and that it is not open to the High Court to interfere with the concurrent finding of fact. He placed reliance on Section 18 of the Evidence Act and said that in an affidavit filed by Avtar Sigh before income tax Authorities he claimed exclusive possession as tenant and that, therefore, the admission made by him would be binding on Gulzar Singh. The Additional Rent Control and the Rent Control Tribunal relying upon this admission of Avtar Singh and oral evidence concluded that Avtar Sigh alone was in exclusive possession and that, therefore, subletting was proved as a fact. We find no substances in the connection. Section 18 of the Evidence Act reads as under :

18. Admission by party to proceedings or his agent; by suitor in representative character; by party interested in subject interested in subject matter; by person from whom interest derived. - Statements made by a party to the proceedings, or by an agent to any such party whom the court regards, under the circumstances of the case, as expressly or impliedly authorised by him to make them, are admissions.

Statements made by -

(1) persons who have any proprietary or pecuniary interest in the subject matter of the proceeding and who make the statements in their character of persons so interested, or

(2) persons from whom the parties to suit have derived their interest in the subject matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements."

Section 18 postulates that statement made by party to the proceeding, or by an agent to any such party, Whom the Court regards, under the circumstances of the case, as expressly or impliedly authorised by him to make them, are admission. Equally statements made by a person who has any proprietary or pecuniary interests in the subject matter of the proceedings or by persons having derivative interest during the continuance of the interest also are admissions. In this case, admittedly, Gulzar Singh was not a party to the affidavit signed by Avtar Singh. Therefore, the admission made by Avtar Singh that he is the tenant in exclusive possession of the demised premises does not bind Gulzar Singh. In view of the plea and stand of the appelland, Avtar Singh cannot claim to have any pecuniary interest or any joint interest along with Gulzar Singh in the demised premises. Once it is found that Gulzar Singh alone in the tenant, as admittedly pleaded by the appelland, Avtar Singh cannot claim to have any pecuniary or derivative interest in the demised premises. He is not an agent of Gulzar Singh. Under those circumstances, as rightly found by the High Court, that the administration made by Avtar Singh in the affidavit is inadmissible and does not bind Gulzar Singh. Once that admission is excluding from consideration, there is no other evidence worth accepting to conclude that Avtar Singh was exclusive possession as a tenant. The High Court rightly held that the finding of subletting or parting with possession of the premises in dispute was vitiated in law as it was primarily based on inadmissible evidence. Having found the finding vitiated, it was open to the High court to re-examine and reappraise the evidence on record. On Reappraisal it disbelieved the oral evidence. We do not find any error in such reappraisal. It is then sought to be contended that Gulzar Singh had other business and it implies that he is not in exclusive possession of the demised premises. We find no force in the contention. It may be that Gulzar Singh had other business but that does not lead to the conclusion that Gulzar Singh is not in exclusive possession of demised premises as tenant or that he sublet the premises to Avtar Singh.

3. Accordingly, the appeal is dismissed, but in the circumstances, without costs.

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